

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ERIKA CERVANTES,
Plaintiff,

VS.

SAM'S EAST, INC.,
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NO. 1:22-cv-00820

JURY TRIAL REQUESTED

NOTICE OF REMOVAL

Defendant **SAM'S EAST, INC.** (hereinafter "Defendant"), files this Notice of Removal of the above-styled action pursuant to 28 U.S.C. § 1446(a) and would respectfully represent and show unto this Court the following:

A. Introduction

1. Defendant has filed its Civil Cover Sheets pursuant to Local Rule 3.1 and Local Rule 81.1. *See Exhibit A.*

2. On or about July 8, 2022, Plaintiff **ERIKA CERVANTES** ("Plaintiff") initiated the state court lawsuit against Defendant in the 126th Judicial District Court of Travis County, styled *Erika Cervantes v. Sam's East, Inc.*; Cause No. D-1-GN-22-003093 (the "State Court Action"). In the State Court Action, Plaintiff alleged a cause of action for premises liability against Defendant. In addition, Plaintiff seeks to recover damages for reasonable medical care and expenses in the past, reasonable and necessary medical care and expenses in the future, physical pain and suffering in the past, mental anguish in the past, physical impairment in the past, disfigurement in the past, lost wages in the past, physical pain and suffering in the future, mental anguish in the future, physical impairment suffered in the future, disfigurement in the future and

lost wages and or loss of earning capacity in the future.. *See Plaintiff's Original Petition*, attached hereto as **Exhibit B**.

3. The attorneys involved in the action being removed are listed as follows:

Party and Party Type

Attorney(s)

Erika Cervantes - Plaintiff

Geoffrey E. Schorr
Texas Bar No. 24029828
SCHORR LAW FIRM, P.C.
328 W. Interstate 30, Suite 2
Garland, TX 75043
Phone: 972-226-8860
Fax: 972-226-9787
Email: geoff@schorrfirm.com

Sam's East, Inc. – Defendant

Brett H. Payne
Texas Bar No. 00791417
WALTERS, BALIDO & CRAIN, L.L.P.
9020 N. Capital of Texas Highway
Building I, Suite 170
Austin, Texas 78759
Phone: 512-472-9000
Fax: 512-472-9002
Email: paynevfax@wbclawfirm.com

4. The name and address of the court from which the case is being removed is as follows:

126th Judicial District Court
The Honorable Aurora Martinez Jones
Travis County Courthouse
1000 Guadalupe, 4th Floor
Austin, Texas 78701
Phone: (512) 854-9313
Fax: (512) 854-9332
Mailing Address:
P.O. Box 1748
Austin, Texas 78767

B. The Notice Of Removal Is Timely

5. Defendant's agent was served with citation and a copy of Plaintiff's Original

Petition on or about July 12, 2022. *See Exhibit C.* Pursuant to 28 U.S.C. § 1446(b), Defendant's Notice of Removal was filed within thirty (30) days after receipt by Defendant, through service or otherwise, of a copy of an initial pleading from which it may first be ascertained that the case is one which is or has become removable.

C. Complete Diversity & Amount In Controversy Is Over the Threshold

6. Pursuant to the State Court Action, at the time of the filing of this Petition, Plaintiff Erika Cervantes was, and is still, an individual residing in Texas.

7. Defendant Sam's East, Inc. is now, and was at all times relevant hereto, an incorporated entity under the laws of the State of Arkansas with its principal place of business in Bentonville, Arkansas. Defendant's corporate headquarters, including officers and directors, is located at 702 S.W. 8th Street, Bentonville, Arkansas 72716-8312.

8. A corporation is "a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019) (quoting 28 U.S.C. § 1332(c)(1)).

9. Accordingly, for diversity purposes, Sam's East, Inc. is a citizen of Arkansas. *MidCap Media Fin., L.L.C.*, 929 F.3d at 314.

10. In light of the foregoing, the parties are of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1332(c)(1) 1441(b).

11. Further, the case involves an amount in controversy of more than \$75,000. *See* 28 U.S.C. § 1332(a). A court can determine that removal is proper from a plaintiff's pleadings if plaintiff's claims are those that are likely to exceed the jurisdictional amount. *See Allen v. R&H Oil & Gas., Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995); *De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th

Cir. 1993). In the State Court Action, Plaintiff alleges she seeks “monetary relief over \$250,000.00 but not more than \$1,000,000.00.” See **Exhibit B**. Thus, the amount in controversy in the instant case meets the requirements for removal.

12. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). See **Exhibit D**.

D. Basis for Removal

13. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, because Plaintiff is a citizen and resident of Texas, Defendant’s principal place of business is located in Arkansas, and the amount in controversy exceeds \$75,000.00, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

E. Filing of Notice with State Court

14. Promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through her attorney of record and to the clerk of the state court action.

F. Prayer

15. **WHEREFORE, PREMISES CONSIDERED**, Defendant Sam’s East, Inc. requests that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that it has such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

BY: /s/ Brett H. Payne
Brett H. Payne
Texas Bar Number 00791417
Nancy G. Scates
Texas Bar Number 24032249
WALTERS, BALIDO & CRAIN, L.L.P.
Great Hills Corporate Center
9020 N. Capital of Texas Highway
Building I, Suite 170
Austin, Texas 78759
Phone: 512-472-9000
Fax: 512-472-9002
Email: paynevfax@wbclawfirm.com

**ATTORNEYS FOR DEFENDANT
SAM'S EAST, INC.**

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of August, 2022, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

Geoffrey E. Schorr
SCHORR LAW FIRM, P.C.
328 W. Interstate 30, Suite 2
Garland, TX 75043
Phone: 972-226-8860
Fax: 972-226-9787
Email: geoff@schorrfirm.com

/s/ Brett H. Payne
BRETT H. PAYNE